

PARTICULARITIES OF THE CHECK PERFORMED BY THE FISCAL ANTIFRAUD DIVISION

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Abstract: The anti-fraud tax inspectors, except for those from the Fraud Fight Division, execute operative and unannounced inspection operations under the form of actions of current or targeted inspections. The thematic inspection is performed by the anti-fraud inspectors based on ID card, badge and thematic inspection order by which they establish the objectives of check, the entities subject to check, the period of check, duration and moment of inspection initiation.

Keywords: unannounced inspection, targeted inspection, fiscal antifraud inspection, report.

1. Unannounced check – component of fiscal inspection

The fiscal body can perform an unannounced check without the prior notification of taxpayer or payer.

The objectives of unannounced check are:

- the factual and documentary check as a result of information regarding the existence of violations of fiscal legislation;
- checking of documents and taxable operations of a taxpayer or payer, in correlation with those held by the person or entity subjected to a fiscal inspection, called *cross inspection*;
- checking of elements of tax base or regarding the factual fiscal situation and the observation, analysis and evaluation of a specific fiscal risk.

The duration of unannounced inspection is established by the manager of inspection body, depending on the objectives of inspection and cannot be higher than 30 days. For the same operations and related fiscal obligations, an unannounced inspection and a fiscal inspection cannot be made concomitantly at the same taxpayer.

At the start of unannounced inspection, the inspection body is obliged to present the taxpayer or payer with the ID card and the service order.

The performance of unannounced inspection must be written down in the unique register of inspection.

At the completion of unannounced inspection a report is signed and represents means of evidence according to the law. A copy of report is communicated to the taxpayer or payer.

The taxpayer or payer can express his point of view regarding the observations mentioned in report within 5 working days from communication.

2. Assignments of the Fiscal Anti-fraud General Division

Within ANAF the General Fiscal Anti-fraud Division is organized and operates, being a structure without legal personality, with assignments of prevention, discovery and fight of tax evasion and fiscal and customs fraud actions.

In the Fiscal Anti-Fraud General Division there are regional fiscal anti-fraud divisions run by general deputy anti-fraud inspectors.

The Fiscal Anti-fraud General Division is coordinated by a vice-president, with rank of state subsecretary, and is run by a general anti-fraud inspector, appointed by decision of prime minister.

The general anti-fraud Inspector is supported in the management activity of General Fiscal Anti-fraud Division by general deputy anti-fraud inspectors, appointed in office by decision of prime minister.

The staff of the General Fiscal Anti-fraud Division is composed of civil servants who fill public specific positions and general public positions.

The staff of the General Fiscal Anti-fraud Division, except for the staff appointed by decision of prime minister and the staff of Fraud Fight Division is appointed in office by order of the Agency president, with observance of provisions of Law no. 188/1999 regarding the Statutes of civil servants, republished, further amended and supplemented.

The fiscal anti-fraud inspectors, except for those from the Fraud Fight Division execute operations of operative and unannounced check under the form of current or targeted inspection.

The operative and unannounced check is made based on ID card, badge and permanent service order.

The *current inspection* is operative and unannounced, based on the ID card, badge and permanent service order.

The *targeted inspection* is executed by antifraud inspectors based on ID card, badge and targeted inspection order by which they establish the objectives to check, entities subject to inspection, the period of check, duration and inspection start. At least 2 antifraud inspectors participate in an action.

The staff of ANAF, who fills public positions of antifraud inspector, wears uniform during the service, distinctive marks, badges and as applicable, weapons and other technical means used as individual means of defence, protection and communication which are allotted to them free of charge. The

weapons, uniform and the other equipment can be used only during the exercise of job duties, in the conditions set out in the Regulations for organization and functioning. In certain situations, in realization of job duties, the anti-fraud inspectors can wear civil outfit. The staff is permanently available to service.

3. Activities carried out by antifraud inspectors

Apart from the *inspection operations*, the *antifraud inspectors* in the fulfilment of assignments have the right to carry out a series of *specific activities*.

According to the legal provisions, *antifraud inspectors can*:

- to perform checks in all the spaces where goods and services are produced, stored or sold or activities are carried out which fall under the incidence of national laws, including transposed from community legislation in force regarding the prevention, discovery and fight against any acts and deeds which are prohibited by them;

- to check according to the law the observance of legal regulations regarding the circulation of merchandise on public roads, on railways and fluvial ways, in harbours, train stations, bus stations, airports, inside of free areas, in the vicinity of customs units, warehouses and in other places, where economic activities are carried out;

- to check the legality of activities carried out, existence and authenticity of supporting documents in the production activities and provision of services or during the transport, storage and sale of goods and to apply seals to assure the integrity of goods;

- to dispose measures according to fiscal legislation, regarding the seizure according to the law of goods whose manufacturing, storage, transport or sale is illicit, and the income earned from commercial activities or provision of illegal services and to collect the financial accounting documents and another kind of documents which can serve to prove the contraventions or as applicable, the crimes;

- to order according to Fiscal Procedural Code precautionary measures whenever there is danger that the debtor eludes the prosecution or hides, alienates or squanders his patrimony and if in the carrying out of specific activity he notices circumstances regarding the committing of acts set forth by the criminal law in the field of tax evasion, to notify the criminal prosecution bodies;

- to identify and establish the identity of directors of checked entities and any persons involved in the committing of frauds and tax evasion and customs evasion noticed and to request them written explanations, as applicable;

- to retain documents according to the Fiscal Procedural Code, to request certified copies of original documents, to collect samples, proofs and

such specimens and to request the performance of technical expert examinations necessary for the finalization of inspection act. The analysis and examination of samples and the technical examinations are made in specialized laboratories agreed, the expenses for them, including the expenses with the storage and handling of seized merchandise, are covered by the specially allotted funds, by the income and expenses budget;

- to acknowledge the contraventions and apply the adequate sanctions, according to the competences set out by the law;

- to apply the measures set out by the legal norms, to check fiscally, to document, to draw up operative, planned and unplanned inspection acts regarding the results of checks, to apply the measures provided by the legal norms and to notify the competent bodies for the valorisation of observations;

- to stop the vehicles according to the law, to check the documents that accompany the goods and transported persons;

- to request according to the law data or as applicable, documents from any private or public entity, for the examination and substantiation of observations regarding the committed acts which contravene the legislation in force in the financial, fiscal and customs field;

- during the exercise of job assignments they have to wear uniform, keep and use the weapons and defence equipment they have according to the law;

- to use the vehicles by wearing signs and sound and light warning specific devices according to the law;

- to create and use databases, including databases of other public institutions necessary for prevention of tax evasion, economic and financial crimes and other illicit acts in the fiscal and customs field. The access to databases of other institutions or legal persons is assured for the fulfilment of legal assignments and with the observance of legal provisions regarding the protection of personal data and classified information, concrete conditions will be established by protocols signed with those institutions or persons;

- to perform checks needed for prevention and discovery of fraud and tax evasion and customs evasion acts;

- to perform targeted inspection operations.

4. Rules for exercise and objectives of antifraud inspection

The main *objectives to be checked by the antifraud inspectors* are:

- observance of commerce norms, seeking the prevention, detection and removal of tax evasion and fiscal and customs fraud;

- the method of production, storage, circulation and valorisation of goods, in all the places and spaces where the economic operators carry out their activity;

- participation, in collaboration with the specialized bodies of other ministries and specialized institutions, in actions of detection and fight against illicit activities;

- tax evasion phenomena and fiscal and customs fraud. The operative and unannounced inspection is made by antifraud inspectors, except for those from the Fraud Fight Division, according to the law.

The operative and unannounced inspection can be made for the purpose of realization of targeted inspection operations which represent the checking activity by which we seek the observation, analysis and evaluation of a fiscal risk specific to one or more economic activities determined.

At the start of operative and unannounced inspection, the antifraud inspector is obliged to identify himself according to the law.

Whenever the operative and unannounced inspection is made at the registered office or the secondary offices of the taxpayer or payer, it is written down in the unique register of inspection, according to the law.

Example for the inspection made by antifraud inspectors

Following an inspection made by an Anti-Fraud inspection team in the Company Student (micro-enterprise) they seized a stock of merchandise held without documents, in amount of 50,000 lei. Record in accounting system the operations related to inspection and the possible contravention sanctions.

Resolution:

1. Taking into account the analysis of deductibility of expenses with seizure, the seizure does not have as object the deductibility, because the taxation of the micro-enterprise is done depending on income.

2. Decrease from management of seized merchandise:

$$607 = 371 \quad 50.000 \text{ lei}$$

3. Cancellation of VAT input tax (self-invoice), because the entity loses the right of VAT deduction for the seized merchandise

(the merchandise is not designed for sale):

$$635 = 4426 \quad 9.500 \text{ lei}$$

4. Determination of the fine in accounting law (non-registration of merchandise) with the amount of 1,000 lei

$$6581 = 4481 \quad 1.000 \text{ lei}$$

5. Inspection documents drawn up by antifraud inspectors

Following the inspections the antifraud inspectors draw up the following *inspection documents*:

- a. *The report* represents the bilateral inspection act which is drawn up by the antifraud inspectors on the occasion of operative and unannounced inspection, for the observation of factual and documentary situations that exist

at a given moment to establish the fiscal factual situation, and for observation of circumstances regarding the committing of actions set out by the criminal law in the financial, fiscal and customs field and for establishment of their fiscal implications. The observations of inspection will be presented clearly, concisely and legibly without useless details, so that they show the reason de facto and the reason by law which underlay the substantiation of each of them, depending on the nature and objectives of inspection. If during the inspection circumstances were noticed regarding the committing of deeds set forth by the criminal law in the financial, fiscal and customs field, the report mentions all the information, data, documents and relevant acts for establishing the circumstances in which the deeds were committed and the written explanations of directors or any other persons involved. If the directors or the persons involved refuse to offer written explanations, this fact is mentioned in the report. In the report they establish the fiscal implications of deeds, which present the clues for committed crimes of tax evasion or fiscal and customs fraud, in this report they will describe the methods of establishment of supplementary tax basis and the method of calculation by which the prejudice was evaluated, detailed by each tax, duty, contribution or other amounts owed to the general consolidated budget.

The observations will be supported by documents in certified copy or in original, as applicable, and other material means of evidence.

If the inspection action was made simultaneously or successively in many locations where the same taxpayer carries out his activity, the reports will be usually drawn up for each case, in which the inspectors will describe the facts noticed. The observations included in reports signed in the conditions mentioned above can be valorised by a report which includes the description of facts as a whole, the connections between them and their possible fiscal implications. The reports in which the facts are described and valorised later by another report are part of this report.

If there is no information regarding one or more chapters of the model report, we mention briefly the reason for which it cannot be completed.

The observations of the antifraud inspectors resulted from an action of operative and unannounced inspection are valorised depending on the nature of observations and objective of inspection.

The report is communicated to the taxpayer according to the provisions of Law no. 207/2015 for Fiscal Procedural Code, further amended and supplemented.

b. *Report for collection/return of documents*, which is completed by the antifraud inspectors on the occasion of collection or return of documents or acts, according to the law.

c. *Sealing/desealing report*, which is drawn up by the antifraud inspectors in the following situations:

- when there are clues by which in the production places, storage or sale places or during the transport we find goods or products whose origin is not legal or whose manufacture is prohibited by the law or they are produced without authorization, and the inspection cannot be completed, it will be continued later;

- where there is likely that the documents, documents, goods necessary for the performance of inspection are stolen, destroyed or we cannot make their inventory, in view of their collection/retention;

- in the activities for monitoring of transports of goods;

- in other cases, which require sealing, according to the law.

If no representative of taxpayer is present, the sealing or desealing is made in the presence of at least one assistant witness. Also, there will be written all the information regarding the capacity of the persons who represent the taxpayer (employee or empowered person etc.), and if the representative of the taxpayer at the sealing moment is different from the person at the desealing, all his/her identification data will be written down. If we seal vehicles and the sealing place is different from the desealing place, we will obligatorily write all the information regarding the place in which the desealing is carried out. The sealing/desealing report is communicated to the taxpayer according to the provisions of Law no. 207/2015 for Fiscal Procedural Code.

d. *invitation*, by this act the taxpayer is invited and is requested clarifications or documents by the antifraud inspectors, at their office, in the situations which require the performance or continuation of inspection or the inspection could not be made at the registered office, fiscal domicile or a secondary office of the taxpayer and in any other place agreed with the taxpayer. With the requesting of the taxpayer's presence at the office of the General Fiscal Anti-Fraud Division, by the form "Invitation" they request registers, business documents and any other documents.

e. *explanatory note* represents the document by which the antifraud inspectors request written explanations to the representative of taxpayer, any employee of the taxpayer or any person involved in the committing of deeds noticed, which contribute to establish relevant elements from the activity of taxpayer, which can influence the observations or for clarification of causes or circumstances. The request for written explanations will be made during the inspection, whenever they are necessary for clarification and finalization of observations. The questions will be phrased clearly and concisely, to give the opportunity to answer on the subject. IN all cases, the explanations to the questions asked by the antifraud inspectors will be given in writing by "explanatory note". It is signed on each page by the antifraud inspectors and by the person who gave the explanations. If no answer is received, the refusal will be written down in the report adequately.

f. *Report for observation and sanctioning of contraventions*, in which we will mention the fines given by the antifraud inspectors.

6. Conclusions

According to the legal provisions, *antifraud inspectors can*:

- to perform checks in all the spaces where goods and services are produced, stored or sold or activities are carried out which fall under the incidence of national laws, including transposed from community legislation in force regarding the prevention, discovery and fight against any acts and deeds which are prohibited by them;

- to check the legality of activities carried out, existence and authenticity of supporting documents in the production activities and provision of services or during the transport, storage and sale of goods and to apply seals to assure the integrity of goods;

- to dispose measures according to fiscal legislation, regarding the seizure according to the law of goods whose manufacturing, storage, transport or sale is illicit, and the income earned from commercial activities or provision of illegal services and to collect the financial accounting documents and another kind of documents which can serve to prove the contraventions or as applicable, the crimes;

- to order according to Fiscal Procedural Code precautionary measures whenever there is danger that the debtor eludes the prosecution or hides, alienates or squanders his patrimony and if in the carrying out of specific activity he notices circumstances regarding the committing of acts set forth by the criminal law in the field of tax evasion, to notify the criminal prosecution bodies;

- to identify and establish the identity of directors of checked entities and any persons involved in the committing of frauds and tax evasion and customs evasion noticed and to request them written explanations, as applicable;

- to acknowledge the contraventions and apply the adequate sanctions, according to the competences set out by the law;

- to create and use databases, including databases of other public institutions necessary for prevention of tax evasion, economic and financial crimes and other illicit acts in the fiscal and customs field.

- to perform checks needed for prevention and discovery of fraud and tax evasion and customs evasion acts;

- to perform targeted inspection operations.

The fiscal anti-fraud inspectors, except for those from the Fraud Fight Division execute operations of operative and unannounced check under the form of current or targeted inspection.

The operative and unannounced check is made based on ID card, badge and permanent service order. The *current inspection* is operative and unannounced, based on the ID card, badge and permanent service order.

The targeted inspection is executed by antifraud inspectors based on ID card, badge and targeted inspection order by which they establish the objectives to check, entities subject to inspection, the period of check, duration and inspection start.

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